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IN THE

Supreme Court of the United States

VOTERS EDUCATION COMMITTEE, *et al.*,
Petitioners,

v.

WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Washington

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

ROBIN S. CONRAD
AMAR D. SARWAL
NATIONAL CHAMBER LITIGATION CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

BOBBY R. BURCHFIELD
Counsel of Record
JASON A. LEVINE
MATTHEW M. LELAND
MCDERMOTT WILL & EMERY LLP
600 13th Street, N.W.
Washington, D.C. 20005
(202) 756-8000

(cont'd on inside cover)

STEVEN J. LAW
JUDITH K. RICHMOND
OFFICE OF THE CHIEF LEGAL
OFFICER AND GENERAL COUNSEL
U.S. CHAMBER OF COMMERCE
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5576

April 2008 *Counsel for Amicus Curiae*

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INTEREST OF THE *AMICUS CURIAE*

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation, representing an underlying membership of over three million businesses and organizations of every size, in every industry sector, and from every geographic region of the country. A principal function of the Chamber is to represent the interests of its members by filing amicus briefs in cases involving issues of vital concern to the nation's business community. For many years, the Chamber and its Institute for Legal Reform ("ILR") have also engaged in independent issue advocacy on topics involving the free enterprise system and administration of justice. In particular, the Chamber was integral to the case below, and it has three specific interests underlying its participation as *amicus curiae*.[1]

First, as part of its voter education and issue advocacy program in 2004, the Chamber donated

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[1] The parties have consented to the filing of this brief. Counsel of record for all parties received notice of the Chamber's intention to file this brief at least 10 days prior to its due date. Pursuant to Rule 37.6, the Chamber states that no counsel for a party authored this brief in whole or in part, and that no person or entity other than the Chamber made any monetary contribution intended to fund the preparation or submission of this brief. The Chamber acknowledges that it paid the legal fees incurred in preparing the Petition for Writ of Certiorari of petitioner Voters Education Committee ("VEC"), which has depleted its funds. The Chamber also expects to pay the legal fees associated with additional submissions by the VEC in this matter.

$1.5 million to petitioner VEC, which the VEC used to fund the advertisement at issue here. The Chamber also participated at material stages of this litigation by responding to a disclosure inquiry by the Washington Public Disclosure Commission ("PDC") in September 2004, by providing non-party discovery to intervenor Deborah Senn, and by filing *amicus* briefs that supported the VEC before the trial court and on appeal.

Second, after the trial court issued its summary judgment ruling (but before the decision of the Washington Supreme Court), Public Citizen filed an enforcement request with the PDC asserting that the Chamber was a "political committee" merely by virtue of its monetary donation to the VEC. On April 3, 2006, the Washington State Attorney General's Office determined that Public Citizen's position appeared to lack merit, but that its enforcement request would be held in abeyance pending the decision of the Washington Supreme Court. The lingering threat of a PDC enforcement action underscores the Chamber's interest here.

Finally, the Chamber has a strong interest in governmental efforts to regulate issue advocacy and voter education programs generally. The Chamber was a named plaintiff in *McConnell v. FEC*, 540 U.S. 93 (2003), for example.[2] Now, this highly-publicized

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[2] The Chamber also participated as an *amicus curiae* in landmark First Amendment cases, including: *FEC v. Wis. Right to Life, Inc.*, 127 S. Ct. 2652 (2007) ("*WRTL*"); *Wis. Right to Life, Inc. v. FEC*, 546 U.S. 410 (2006); *FEC v. Massachusetts*

(continued...)

Washington case may have significant ramifications in future election cycles for the Chamber's voter education efforts nationwide. The Chamber's interests as a *donor* to the VEC, and thus as a *sub rosa* political speaker, differ from those of the VEC itself and are addressed below.

SUMMARY OF ARGUMENT

This case is about the constitutional limits of state power to require that independent political speakers register with government agencies and publicly disclose the identity of their donors as a precondition to speech. Here, the Washington Supreme Court upheld application to the VEC of a provision of the Washington Fair Campaign Practices Act ("FCPA") imposing onerous registration and disclosure requirements on "political committees." The Act, as codified now and in 2004 when it was applied to the VEC, defines "political committee" vaguely and broadly to encompass any person or entity who "expect[s]" to receive "contributions" or make "expenditures" "in support of, or opposition to, any candidate or ballot proposition." *See* Wash. Rev. Code § 42.17.020(33) (2004) re-codified as Wash. Rev. Code § 42.17.020(39) (2008). Designation ask a "political committee" triggers reporting and disclosure obligations for *all* the entity's activities. Certiorari is appropriate for four reasons.

Citizens for Life, Inc., 479 U.S. 238 (1986) ("*MCFL*"); and *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

First, review by this Court could help dispel confusion engendered by the Washington Supreme Court and reaffirm, as *Buckley* held, that an organization may be regulated as a political committee only if its "major purpose" is campaign spending. *See Buckley v. Valeo*, 424 U.S. 1, 79 (1976). Indeed, because the FCPA's vague political committee definition bears no resemblance to the sharply drawn campaign finance statutes that this Court has upheld (*e.g.*, *McConnell*, 540 U.S. at 189-94), only *Buckley's* major purpose analysis could preserve the FCPA as applied here.

Second, this case provides the Court with an opportunity to address the right to anonymous speech by members of or donors to independent issue advocacy groups. Washington's disclosure regime threatens to dampen support for issue advocacy organizations.

Third, granting the VEC's Petition would enable the Court to reaffirm that even a clear statute imposing registration and disclosure requirements on independent, core speech must survive the "exacting scrutiny" required by *Buckley*. 424 U.S. at 64.

Finally, this case would allow a definitive explanation of *McConnell* footnote 64 (540 U.S. at 170 n.64), which the Washington Supreme Court erroneously relied upon as conclusive support for its view that the terms "support" and "oppose" in the FCPA's definition of a political committee were not impermissibly vague. *See* Pet. App. 19a-21a. As shown below (pp. 17-21), the use of these terms

within the detailed provisions of Section 101 of Bipartisan Campaign Reform Act ("BCRA"), 2 U.S.C. § 431(20)(A)(iii) (2002), cannot fairly be compared to the use of the terms in the undefined context of the FCPA.

REASONS FOR GRANTING THE PETITION

I. ESPECIALLY IN THE CONTEXT OF INDEPENDENT SPEECH WITH NO PROSPECT OF CORRUPTING A CANDIDATE, APPLICATION OF A VAGUE "SUPPORT OR OPPOSE" STANDARD RAISES SERIOUS FIRST AMENDMENT CONCERNS.

Comment and debate about issues of public concern are at the very heart of the First Amendment. *Buckley*, 424 U.S. at 14 ("There is practically universal agreement that a major purpose of [the First Amendment] was to protect the free discussion of governmental affairs.") (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)).[3] Disclosure requirements infringe on both speech and associational freedom. *Id.* at 64-66. Accordingly, "precision of drafting and clarity of purpose are

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[3] Decades of jurisprudence and dozens of decisions addressing the scope of the First Amendment in political speech cases cannot and should not obscure a vexing irony: as speech gets closer to the very core of the First Amendment, it is subject to increasing regulation. The Founding Fathers would certainly be stunned to learn that a payment for a sign that reads "Vote for Joe" can be more extensively regulated than payment for one that says "Eat at Joe's."

essential" to such requirements. *Erzoznik v. City of Jacksonville*, 422 U.S. 205, 217-18 (1975).

The consequences to a speaker of being deemed a "political committee" under the FCPA are severe. As in many campaign finance statutes, once the FCPA deems an entity a "political committee," the entity incurs reporting obligations not only for the activities deemed to "support or oppose" a candidate, but for *all* its activities, even those with no possible political purpose. Wash. Rev. Code § 42.17.090 (2004).[4] Plainly, the burdens attendant to a designation as a "political committee" are sufficient to deter speech. Review of that designation here is warranted for several reasons.

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[4] A Washington appellate court described these extensive reporting obligations in a case involving the Washington Education Association:

> A finding that WEA was a political committee would require WEA to file detailed reports to the PDC of all bank accounts, all deposits and donations, and all expenditures, including the names of each person contributing funds. . . All funds would have to be reported, even those used for traditional labor union activities not connected with electoral campaign activity, such as collective bargaining, member representation, and other teacher assistance.

State ex rel. Evergreen Freedom Found. v. Wash. Education Ass'n, 49 P.3d 894, 902 (Wash. Ct. App. 2002).

A. The Statutory Definition of "Political Committee" Is Vague and Overbroad, and as Construed, Is at Odds With Common Understanding.

As explained in the VEC's Petition (at 12-16), the FCPA's definition of a political committee suffers problems of vagueness because it does not precisely articulate the activities that are subject to registration and disclosure. It defines a political committee as:

> [A]ny person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

Wash. Rev. Code § 42.17.020(33). In addition to the reasons set forth by the VEC, granting the Petition would afford the Court an opportunity to reaffirm *Buckley* and its progeny by evaluating two aspects of the vagueness – and overbreadth – of the challenged FCPA provision.

First, the Washington Supreme Court's decision expands the definition of a "political committee" beyond common understanding to absurd dimensions. To avoid constitutional infirmity, *Buckley* construed the term political committee "narrowly" to encompass only "organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Buckley*, 424 U.S. at 79. *See also MCFL*,

479 U.S. at 252 n.6 (holding that a non-profit corporation did not qualify as a political committee because its "central organizational purpose [was] issue advocacy, although it occasionally engage[d] in activities on behalf of political candidates."). For an organization to qualify as a political committee under the "major purpose" test, it must engage in "extensive" spending on express advocacy communications (*i.e.*, independent expenditures). *Id.* at 262.

In sharp contrast, the Washington Supreme Court's construction of "political committee" is so sweeping that many organizations and entities may be unwittingly caught within the regulation's net. On its face, the FCPA encompasses a breathtaking number of activities and subjects all manner of organizations that engage in even one of these activities to registration and reporting requirements for all their activities regardless of the groups' overarching purposes. Under the FCPA, for example, a neighborhood book club that raises money from its four participants ("contributions") to purchase four yard signs ("expenditures") supporting a "ballot proposition" to increase public library funding could be deemed a political committee, even if the "major purpose" of all other club donations is to support activities besides campaign spending (*e.g.*, beverages and books). More draconian still, the club would need to report its other activities as well. Ignoring its own precedent, the Washington Supreme

Court did not consider these consequences in upholding the FCPA as applied to the VEC.[5]

Second, the FCPA's definition of a political committee does not resemble the detailed and narrowly drawn campaign finance statutes that have passed constitutional muster in previous decisions of this Court. For example, in *McConnell*, the Court upheld a precisely-tailored regulation of "electioneering communications." *See* 540 U.S. at 189-94 (upholding 2 U.S.C. § 434(f)(3)(A)(i)). To qualify as an "electioneering communication," the speech was required to: (i) be broadcast on radio or television; (ii) refer to a current candidate for federal office; (iii) be aired within the candidate's electoral market and be available to at least 50,000 people; (iv) promote, support, attack, or oppose the candidate; (v) be aired within 60 days of a general election, or within 30 days of a primary election; and (vi) be paid for with corporate or union funds. *See* 2 U.S.C. § 434(f)(3)(A)(i).

The FCPA's political committee definition lacks any such specificity, sweeping in "any" person, entity, or organization with a mere "expectation" of receiving contributions or making expenditures "in support of, or opposition to" any candidate, or even "any ballot proposition." The statute responds to the "who," "what," "when," "where," and "how" questions

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[5] Previously, the Washington Supreme Court applied the "primary purpose" test to hold that even an incumbent's campaign committee was not a "political committee." *See State v. Dan J. Evans Campaign Comm.*, 546 P.2d 75, 79 (Wa. 1976).

with "anyone," "anything," "anytime," "anywhere," and "anyhow." One would have thought such a remarkably broad statute would be facially invalid on numerous grounds. *See Bellotti*, 435 U.S. at 776 (invalidating restrictions on corporate speech concerning a ballot proposition); *Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley*, 454 U.S. 290, 297-99 (1981) (invalidating contribution limitations as applied to committee formed to support a ballot proposition). The Court's review of the FCPA would aid in elucidating the constitutional limitations on political committee regulations.

B. Having Found the Washington Statute Not Vague, the Lower Court Ignored *WRTL*.

Even if, contrary to this Court's precedents, the Washington Supreme Court correctly found the definition of "political committee" not vague, it ignored this Court's recent ruling in *WRTL*. Although this Court had upheld the "electioneering communications" definition in BCRA, it concluded in *WRTL* that the statute as applied to the advertisement at issue was overbroad because the statute, though clear, swept in speech that was entitled to First Amendment protection. The advertisement in *WRTL* was not the "functional equivalent of express advocacy," meaning that it was "susceptible of [at least one] reasonable interpretation other than as an appeal to vote for or against a specific candidate." 127 S. Ct. at 2667.

After deciding that the "support or oppose" definition of political committee was not unconstitutionally vague, the Washington Supreme Court held that a determination of whether the VEC's advertisement constituted express advocacy was "unnecessary" and "decline[d] to reach the issue of whether VEC's advertisement constituted express advocacy or issue advocacy." Pet. App. at 25a-26a, 32a. This ruling was plainly wrong; *WRTL* holds that even a clear statute cannot be applied to regulate protected speech.

C. Disclosure Obligations Like Those in the Washington Statute Seriously Implicate First Amendment Rights.

In connection with the core freedom of association, the right to support the discussion of public issues anonymously without fear of retaliation is protected by the First Amendment. *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 342, 346-47 (1995) (invalidating prohibition on anonymous campaign literature such as leaflets, in part because such anonymous speech enabled a speaker to ensure that its message was not prejudged based upon a listener's bias toward the speaker).[6] Unless

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[6] *Accord Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 199–200 (1999) (invalidating requirement that individuals wear identification badges when circulating petitions for signatures because it "discourage[d] participation in the petition circulation process by forcing name identification without sufficient cause"). *See also Watchtower Bible & Tract Soc'y of N.Y. Inc. v. Vill. of Stratton*, 536 U.S. 150, 160, 166–67 & n.14 (2002) (invalidating permit requirement for door-to-door

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narrowly construed, seemingly boundless disclosure requirements like those contained in the FCPA threaten to abrogate these rights by requiring the public identification of private persons who donate funds to organizations engaged solely in issue-related speech.[7]

As Alexander Hamilton, James Madison, and John Jay demonstrated by disseminating *The Federalist Papers* under the pseudonym "Publius," anonymity can be vital to public discourse. Not only does anonymous communication protect speakers from the consequences of espousing unpopular views, it also allows ideas to be communicated on their own merits without allowing the speaker's identity to detract from the message. By assuming that all anonymity is nefarious, disclosure statutes such as the FCPA can place heavy burdens on the associational freedom of independent issue advocacy organizations and their individual participants.[8] In

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canvassers because it would compel them to "forgo their right to speak anonymously," thus "deter[ring]" their speech).

[7] "The right to join together 'for the advancement of beliefs and ideas' is diluted if it does not include the right to pool money through contributions, for funds are often essential if 'advocacy' is to be . . . 'effective.'" *Buckley*, 424 U.S. at 65-66 (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958)).

[8] The notion that voters are entitled to know which speakers are "hiding behind" organizational names goes much too far. For example, the Democratic National Committee, the Republican National Committee, the AFL-CIO, the ACLU, National Right to Life, and indeed the Chamber itself are no

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addition to the administrative costs of disclosure, disclosure laws deter participation and financial support. *See NAACP*, 357 U.S. at 462-63 (holding that freedom of association was infringed by law requiring disclosure of independent issue advocacy group's rank-and-file membership).

This threat to "anonymous speech" is manifest in this case. Once the Chamber was disclosed as the donor supporting the VEC's activities, Ms. Senn's counsel intervened in the case and initiated deposition and document discovery of the Chamber and its officers. This broad and costly inquiry by itself "raise[d] First Amendment concerns." *WRTL*, 127 S. Ct. at 2669. As shown above (p. 2), Public Citizen went even further, urging the PDC to deem the Chamber a "political committee," and thus require it to disclose *its donors*, based solely upon its monetary donation to the VEC. The Washington Attorney General's Office questioned the merits of this enforcement request, but held it in abeyance pending resolution of this case by the Washington Supreme Court. The VEC's Petition gives this Court the opportunity to provide the proper interpretive framework for registration and disclosure statutes.[9]

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more than the sum of their constituent parts. It is a fool's errand – not to mention a serious infringement of associational freedom – to determine the point at which an entity must disclose its constituent parts as a price for speaking on public issues.

[9] The possibility that the Washington Supreme Court's decision could lead to the retroactive designation of entities like the Chamber as "political committees" has significant speech-

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D. When Political Speech Is Concerned, Statutory Mandates Must Be Precise.

Even a clear disclosure statute does not overcome First Amendment concerns, however, unless it survives "exacting scrutiny." The Washington Supreme Court's assertion that "disclosure requirements d[o] not prevent anyone from speaking," Pet. App. at 28a (quoting *McConnell*, 540 U.S. at 201) misses the point. Exacting scrutiny "is necessary because compelled disclosure has the potential for substantially infringing the exercise of First Amendment rights." *Buckley*, 424 U.S. at 66. "Exacting scrutiny" allows interference with the freedom of association only if the government has "a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." *Id.* at 25. *Accord McIntyre*, 514 U.S. at 347 ("exacting scrutiny" requires regulation to be *narrowly tailored* to serve an *overriding* state interest); *Bellotti*, 435 U.S. at 786 (state interest must be "compelling").

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chilling ramifications for donors to such entities because, for example, 14 of the states identified in the VEC's petition (Pet. App. at 190a-95a) *prohibit* corporate donations to political committees. *See* ARIZ. REV. STAT. § 16-919.A; COLO. CONST. art. 28, § 3(4); KY. REV. STAT. ANN. §§ 121.035, 121.150(21); MASS. GEN. LAWS ch. 55, § 8; MICH. COMP. LAWS § 169.254; MONT. CODE ANN. § 13-35-227; N.C. GEN. STAT. §§ 163-278.15(a), 19(a); N.D. CENT. CODE § 16.1-08.1-03.3(1); OKLA. STAT. TIT. 74, ch. 62 Appx. § 257:10-1-2(d); R.I. GEN. LAWS § 17-25-10.1(h); TENN. CODE ANN. § 2-19-132; TEX. ELEC. CODE ANN. § 253.094; W. VA. CODE § 3-8-8; and WYO. STAT. ANN. § 22-25-102.

The Court has identified three interests potentially served by recordkeeping and disclosure laws: (1) aiding the electorate by providing information on the sources of candidate funds and candidate spending; (2) gathering data to detect violations of campaign contribution limits; and (3) deterring corruption and the appearance of corruption. *Buckley*, 424 U.S. at 66-68. Because each of these interests focuses on the financial benefits that are provided directly to candidates by means of contributions, none are sufficient to justify regulation of *independent spending*.[10]

Imposition of disclosure requirements on independent spending is also unrelated to deterrence of corruption. Neither of the recognized forms of corruption – *quid pro quo* exchanges or the purportedly corrosive influences of immense wealth – are attributable to independent political speakers. *Id.* at 66-68 (identifying corruption arising from improper commitments by candidates in exchange for favors). Independent spending often provides "little assistance to the candidate's campaign and indeed may prove counterproductive." *Id.* at 47. Absent pre-arrangements or coordination with candidates, independent speech cannot improperly

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[10] This Court has correctly observed that there is a "fundamental constitutional difference" between independent speech and direct campaign contributions that has led to stricter scrutiny of regulations impacting independent speech. *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 614 (1996) (quoting *FEC v. Nat'l Conservative Political Action Committee*, 470 U.S. 480, 497 (1985)).

influence candidates or public officials through *quid pro quo* transactions. *Id.*

Here, not only was the VEC's challenged advertisement created and broadcast independently of any candidate or political party, any claim of a *quid pro quo* fails because the purported beneficiary of the advertisement, Washington Attorney General Robert McKenna, is the very same public official whose office is pursuing this action *against* the VEC for broadcasting it.

Nor could a purported interest in thwarting "the corrosive and distorting effects of immense aggregations of wealth," *Austin v. Mich. State Chamber of Commerce*, 494 U.S. 652, 660 (1990), support the vague and overbroad regulation here. The Court has upheld regulations based on this interest only when the regulated communications contain express advocacy or the functional equivalent of express advocacy. *Id. See also WRTL*, 127 S. Ct. at 2667; *MCFL*, 479 U.S. at 249, 257-58 (explaining the corruption rationale for protecting the "marketplace of political ideas" from the "corrosive and distorting effects" of corporate-funded *express advocacy*). Because the Washington Supreme Court deemed the existence of express advocacy to be irrelevant to the FCPA's application, it could not have relied on the interest identified in *Austin*.[11]

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[11] The Chamber submits that this case provides a vehicle for the Court to revisit *Austin*'s controversial "corrosion and distortion" rationale. *See* Thomas F. Burke, *The Concept of*

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The Washington Supreme Court failed to consider whether its expansive construction of the statute could survive exacting scrutiny. Therefore, this case provides an opportunity for the Court to reassert the importance of this constitutional standard.

II. FOOTNOTE 64 OF *MCCONNELL* DOES NOT SUPPORT THE DECISION BELOW.

Eschewing any application of *Buckley's* "express advocacy" limitation to the FCPA's political committee definition, the Washington Supreme Court relied upon the "federal election activity" restriction set forth in Section 101 of BCRA to justify its holding that the terms "support" and "oppose," as employed in the FCPA, were not unconstitutionally vague. *See* Pet. App. 19a-21a. *McConnell's* ruling upholding BCRA § 101, however, does not support the decision below because the two laws have markedly different contexts and statutory constructions. *See McConnell*, 540 U.S. at 170 n.64. This case presents an opportunity for the Court to clarify the meaning of *McConnell* footnote 64 to prevent the Washington Supreme Court's erroneous

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Corruption in Campaign Finance Law, 14 CONST. COMMENTARY 127, 133-36, 149 (1997) (explaining that the "distortion" rationale defines corruption too broadly); Jill E. Fisch, *Frankenstein's Monster Hits the Campaign Trail: An Approach to Regulation of Corporate Political Expenditures*, 32 WM & MARY L. REV. 587, 610-30, 641 (Spring 1991) (arguing that *Austin* is inconsistent with *Buckley* because it allows the government to combat corruption by "leveling the playing field" of political spending).

interpretation from sowing confusion among the lower courts. *See* VEC Pet. at 12-16.

BCRA §101 regulates federal election activity by requiring state and local party committees, all of which are already subject to extensive state and federal regulation, to use only federal funds for clearly identified "public communications." The restriction applies only to:

> a *public communication* that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that opposes or supports a candidate for that office (regardless of whether the communication expressly advocates a vote for or against the candidate).

BCRA, § 101, 2 U.S.C. § 431(20)(A)(iii) (2002) (emphasis added). To add more clarification, BCRA defines a "public communication" as:

> a communication by means of any broadcast, cable, satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public advertising.

Id., 2 U.S.C. § 431(22).

This restriction on federal election activity is clearly distinguishable from the FCPA's definition of a political committee. "Federal election activity" is

very carefully defined so that the independently vague terms "support" or "oppose" are applicable only to an extremely narrow scope of expression described within BCRA.[12] There are specific guidelines on: (1) who is being regulated (state, district, and local political party committees); (2) what activities are covered (communications about clearly identified federal candidates); and (3) what means of communications are encompassed in the restrictions (ten enumerated modes including broadcasts, written publications, and telephone calls). *See id.*

The FCPA lacks the precision of section 101 of BCRA. For example, the FCPA defines its regulated population as "any person," which includes nearly every conceivable individual or entity.[13] Furthermore, essentially any financial activity – namely, "contributions" and "expenditures" – undertaken in connection with political speech appears to trigger registration and disclosure requirements.[14] Finally, the Washington statute

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[12] *McConnell* did not hold that the terms "support" or "oppose" would not be vague standing alone. VEC Pet. at 17-18.

[13] A "person" includes "an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized." WASH. REV. CODE § 42.17.020(30). Only candidates and individuals spending personal funds are exempt. *Id.* § 42.17.020(33).

[14] "Contributions" cover an array of transactions, including, for example: a loan; gift; forgiveness of indebtedness;

(continued...)

restricts not only speech involving candidates, but also speech involving "any ballot proposition."

The perils of such a wide-ranging regulation would be particularly acute for organizations like the Chamber, which routinely interact with state and federal officials who appear as guest speakers at issue-based forums, round-table discussions, and banquets. It is not idle conjecture to fear that any expense paid for by an organization sponsoring such an event could be viewed as "supporting" an officeholder-candidate and would require reporting of the entire spectrum of the organization's financing and activities. The predictable consequence of this regime would be the cessation of the these valued activities, resulting in a profound chill on independent political speech and issue discussion.

In sum, because the population of speakers covered by the FCPA is so large and the categories of speech regulated are so expansive, the FCPA requirements based upon whether one "supports" or "opposes" a candidate are not susceptible to the same degree of precision as is BCRA's public communication provision. Accordingly, the Washington Supreme Court's attempt to save the FCPA's definition of a "political committee" by

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donation; advance; payment; *or anything of value*. WASH. REV. CODE § 42.17.020(14). An "expenditure" also includes numerous transactions, some of which are: a payment; contribution; loan; advance; or gift of money or *anything of value*. *Id.* § 42.17.020(19).

analogy to the "public communication" provision of BCRA is specious. If anything, the comparison emphasizes the relative vagueness and overbreadth of the FCPA.

CONCLUSION

For the foregoing reasons, the Chamber urges the Court to grant the VEC's Petition.

Respectfully submitted,

ROBIN S. CONRAD
AMAR D. SARWAL
NATIONAL CHAMBER LITIGATION CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

STEVEN J. LAW
JUDITH K. RICHMOND
OFFICE OF THE CHIEF LEGAL OFFICER AND GENERAL COUNSEL
U.S. CHAMBER OF COMMERCE
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5576

BOBBY R. BURCHFIELD
Counsel of Record
JASON A. LEVINE
MATTHEW M. LELAND
MCDERMOTT WILL & EMERY LLP
600 13th Street, N.W.
Washington, D.C. 20005
(202) 756-8000

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Counsel for Amicus Curiae